

Crl.R.C(MD)No.45 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.01.2025

Pronounced on : 09.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.45 of 2025

Kavichandran

... Petitioner

Vs.

State of Tamil Nadu rep. through
The Inspector of Police,
Naduveerapattu Police Station,
Cuddalore District.
(Crime No.180 of 2024)

... Respondent

PRAYER : This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, 2023 to call for records and set-aside the order passed in Crl.M.P.No.7495 of 2024, dated 19.11.2024 by the Additional District Judge/Presiding Officer for Special Court under Essential Commodities Act, Thanjavur and to grant interim custody of the vehicle to the petitioner.

For Petitioner : Mr.S.A.Ajmalkhan

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor



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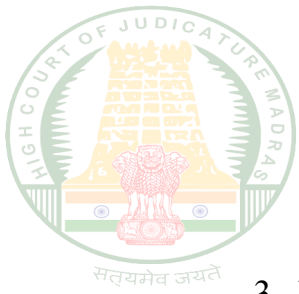
ORDER

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This Criminal Revision Case is filed against the order, dated 19.11.2024, passed in Crl.M.P.No.7495 of 2024 on the file of the learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur, for return of car bearing registration number PY-05-M-5074, which was seized by the respondent police in Crime No.180 of 2024.

2.The brief facts of the case:

It is alleged that on secret information, on 09.08.2024 at 08.00 a.m. the respondent police went to the occurrence place i.e., beneath banyan tree, Erikkarai, Vanniyarpuram, where the petitioner along with four other coaccused were selling ganja in a car and two wheeler and the respondent police seized the vehicles and 1.200 kg ganja. For the alleged occurrence, a case was registered in Crime No.180 of 2024 by the respondent police against them for the offence under Section 20(b)(ii)(B) of NDPS Act. The petitioner is arrayed as Accused No.5 and he is said to be owner of the vehicle and he has filed the petition in Crl.M.P.No.7495 of 2024 before the Additional District Court/Special Court under Essential Commodities Act, Thanjavur, for return of car bearing registration No.PY-05-M-5074 on interim custody. After hearing both, the petition was dismissed by the trial Court on 19.11.2024.

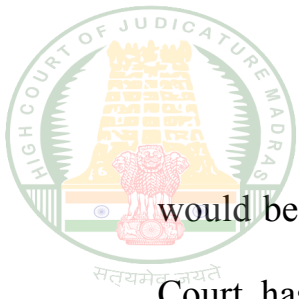


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3. Being aggrieved by the order, the revision petitioner preferred this Criminal Revision Case.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the records in this Criminal Revision Case.

5. The learned counsel appearing for the revision petitioner has submitted that the petitioner is the owner of the Maruti Suzuki Swift car bearing registration No.PY-05-M-5074 and he is arrayed as Accused No.5 in this case. The petitioner's vehicle is no way connected with the alleged offence. The petitioner's vehicle was seized by the respondent police and the same has been kept idle in the respondent's police station without any maintenance. The petitioner's vehicle is kept idle in open place from the date of seizure and the vehicle will get ruined by sun light and rain and it would lose its value. The trial Court has not considered the guidelines for return of property as settled by the High Courts and Hon'ble Supreme Court in **Sunderbhai Ambalal Desai case** reported in **(2002) 10 SCC 283**. The learned counsel further submitted that if the vehicle is allowed to be kept idle in police custody till trial is over, it will not serve any purpose, but if it is returned to its owner it



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would be beneficial to the owner to earn his livelihood. The Hon'ble Supreme Court has ordered to return the property alleged to have been involved in heroin case reported in **CDJ 2025 SC 040 (Bishwajit Dey /v/ State of Assam.** The learned counsel has also relied on the order passed by this Court in CrI.R.C(MD)No.79 of 2024, dated 12.03.2024.

6.The learned Additional Public Prosecutor for the respondent objected and contended that the petitioner is Accused No.5 in this case and he involved in this crime and the petitioner along with coaccused were found in possession of contraband on the allegation that they were selling ganja from the car and two wheelers. The seized vehicle was remanded before the trial Court in RPRNo.67 of 2024, however, confiscation proceedings has not been initiated so far and the same is pending for process. The vehicle was seized with contraband. If the interim custody of the vehicle is ordered, there are more possibilities for not co-operating for investigation and the petitioner may alter the physical conditions of the vehicle. The trial Court has correctly appreciated the facts of the case and dismissed the petition. If the vehicle is returned, the petitioner would allow his vehicle for continuance of the offence of this similar nature. Therefore, he strongly opposed this petition.



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7. On hearing both side, it is clear that the petitioner is ranked as fifth accused in this case. The petitioner's car and two wheelers were seized under NDPS Act on the allegation that the petitioner and other accused were selling ganja from the vehicles. The seized contraband is about 1.200 kg. The car has been in police custody. It is also clear that the property in question was remanded before the trial Court under RPRNo.67/2024. It is the settled principle by the Hon'ble Supreme Court held in **Sunderbhai Ambalal Desai** case, there is no use in keeping seized vehicles at police station in open place exposing to sunlight and rain for a long period and it is open to pass appropriate orders for return of seized vehicles on conditions. The citation relied on by the petitioner's side is also considered. Recently, the Hon'ble Supreme Court in a case of “**Bishwajit Dey /v/ The State of Assam**” reported in **CDJ 2025 SC 040** has held in paragraph Nos.29 and 30 as follows:

“29. Though seizure of drugs/substances from conveyances can take place in a number of situations, yet broadly speaking there are four scenarios in which the drug or substance is seized from a conveyance. Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. Secondly, where the contraband is recovered from the possession of the agent of the owner i.e., like driver or cleaner hired by the owner. Thirdly, where the vehicle has been stolen by the accused and



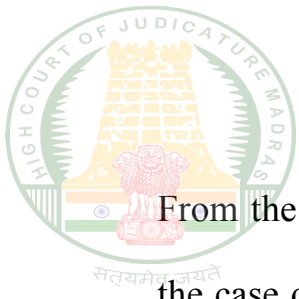
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contraband is recovered from such stolen vehicle. Fourthly, where the contraband is seized/recovered from a third-party occupant (with or without consideration) of the vehicle without any allegation by the police that the contraband was stored and transported in the vehicle with the owner's knowledge and connivance. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or his agent would not be arrayed as an accused.

30. This Court is of the view that criminal law has not to be applied in a vacuum but to the facts of each case. Consequently, it is only in the first two scenarios that the vehicle may not be released on superdari till reverse burden of proof is discharged by the accused-owner. However, in the third and fourth scenarios, where no allegation has been made in the charge sheet against the owner and/or his agent, the vehicle should normally be released in the interim on superdari subject to the owner furnishing a bond that he would produce the vehicle as and when directed by the Court and/or he would pay the value of the vehicle as determined by the Court on the date of the release, if the Court is finally of the opinion that the vehicle needs to be confiscated.”



From the above observations, the Hon'ble Supreme Court clearly observed in the case of return of vehicle seized on the allegation that the contraband/drugs was transported or possessed for illegal acts in a vehicle, the vehicle might not be released on interim custody to the owner, who is arrayed as an accused until reverse burden is discharged.

8. In this case, the petitioner himself has admitted that he is arrayed as Accused No.5. On perusal of FIR, the name of the petitioner is found place as Accused No.5. If so, as held by the Hon'ble Supreme Court the vehicle would not be released till reverse burden of proof is discharged by the petitioner. The respondent alleges that the petitioner was selling contraband from the seized vehicle. But, the petitioner simply said that his vehicle is not connected with the crime. There is no averment by the petitioner that there is no such sale of contraband from his vehicle nor any material produced to substantiate the same. Hence, this Court is of the view that the seized vehicle will not be released on interim custody as sought by the petitioner and hence, the impugned order of the trial Court does not warrant any interference. Therefore, this criminal revision case is liable to be dismissed.



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9. In the result, this Criminal Revision Case is dismissed.

09.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Additional District Judge/Presiding Officer,
Special Court under Essential Commodities Act,
Thanjavur.
- 2.The Inspector of Police,
Naduveerapattu Police Station,
Cuddalore District.
(Crime No.180 of 2024)
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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